

BILL ANALYSIS

C.S.S.B. 857
By: West
Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Junior and community colleges currently use the purchasing statutes established for public school systems, but as junior colleges have grown, so too has the need to establish procurement regulations to meet their unique requirements. There are significant differences in the needs of junior colleges and public schools, and the public school procurement statutes include many aspects that are not applicable to junior colleges.

C.S.S.B. 857 sets forth provisions relating to the procurement of contracts for goods and services, construction, and professional and consultant services on behalf of junior college districts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 857 amends the Education Code to exempt junior college districts from provisions in the Education Code relating to public school district purchases and contracts, and to exclude the governing board of a junior college district from the definition of "board" as it relates to construction and repair of permanent improvements in higher education.

C.S.S.B. 857 requires each junior college district that is located wholly or partially in a county with a population of one million or more and that had an annual enrollment of 20,000 or more full-time or part-time students in one or more of the most recent five academic years to adopt a policy stating its commitment to developing, maintaining, and enhancing participation by historically underutilized businesses in all phases of the district's procurement processes in order to support, to the greatest extent feasible, the efforts of such businesses to compete for purchases of equipment, supplies, services, including professional services, and construction contracts. The bill requires each junior college district, not later than the 60th day following the last day of the district's fiscal year, annually to publish in a newspaper of general circulation in the county in which the majority of the territory or population of the district is located a report of the total number and total value of contracts awarded by the district in the preceding fiscal year and the number and total value of those contracts awarded to historically underutilized businesses.

C.S.S.B. 857 prohibits a junior college district engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement from considering whether a vendor is a member of or has another relationship with an organization and requires the district to ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish a person's right to work because of the person's membership in or other relationship status with respect to an organization. The bill authorizes a junior college district board of trustees by resolution to establish rules permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district

and establishes that it is not a violation for a junior college district, under such rules, to refuse to award a contract to, or refuse to enter into a transaction with, an apparent low bidder or successful proposer that is indebted to the district. The bill requires a junior college district, in order to increase efficiency and achieve savings, on an annual basis to identify common types of goods and services to be purchased from the district's budget and, to the extent the district determines practicable, consolidate the purchase of those goods or services under contracts. The bill defines "historically underutilized business" by reference.

C.S.S.B. 857 establishes that in provisions relating to purchasing contracts for goods and services other than construction or professional services the terms "bidder" and "vendor" are used interchangeably to identify an entity that responds to a request for competitive bids, proposals, or qualifications, and the term "bid" is used to refer to a competitive bid, proposal, or statement of qualifications. The bill establishes that, to the extent of any conflict, such provisions prevail over any other law relating to the purchase of goods and services by a district other than a law relating to contracting with historically underutilized businesses or the procurement of goods and services from persons with disabilities.

C.S.S.B. 857 requires each contract by a district with a value of \$50,000 or more that covers one or more fiscal years to be made by the method, of the following methods, that provides the best value for the district: competitive sealed bids, competitive sealed proposals, the reverse auction procedure defined by state law, or the formation of a political subdivision corporation under state law. The bill authorizes only one of these methods to be used for any individual contract and requires the district to determine which method provides the best value for the district before publishing the notice as required. The bill requires the district, if it uses the competitive sealed proposal method, to reveal when the proposals are opened the names of the companies submitting proposals and to keep the contents of the proposals confidential until the district concludes negotiations and awards a contract. The bill authorizes a district to purchase certain goods and services that are available from only one source or certain other goods and services without complying with the purchase methods requirement and sets forth procedures by which the district is required to select a provider of those goods and services.

C.S.S.B. 857 requires contracts for services that result in no cost to the district or that provide income to a district to be based on bids, proposals, or qualifications that are solicited and awarded in the same manner as a contract for the purchase of goods or services. The bill authorizes contracts for the replacement or repair of district property to be made by purchase methods other than those required if that the property is destroyed, stolen, severely damaged, or unusable, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees, or its designee, determines that the delay posed by using the specified purchase methods would pose a material threat to personal safety or potential damage to other property or would prevent or substantially impair the conduct of classes or other essential district activities. The bill authorizes a district to purchase, license, or otherwise acquire library goods and services without complying with the purchase methods requirements and defines "library goods and services."

C.S.S.B. 857 authorizes a district to acquire insurance using a two-step process to obtain competitive sealed proposals and sets forth requirements for that process. The bill requires a contract that extends past the end of a district's fiscal year to include a provision that permits termination at the end of each fiscal year and prohibits contracts solely for the purchase of goods from exceeding five years in duration. The bill requires a district to award a contract to the lowest responsible bidder offering the best value to the district according to the selection criteria established by the district and requires the district to publish in the request for bids, proposals, or qualifications the criteria the district will use to evaluate the offers and the relative weights given to the criteria that are known at the time of publication. The bill enumerates certain criteria the district must consider in determining the lowest responsible bidder and authorizes the district to reject any or all bids, proposals, or qualifications, or parts of same, if the rejection serves the district's interest.

C.S.S.B. 857 sets forth the procedure by which bids are to be requested and opened, and prohibits a bid that has been opened from being changed for the purpose of correcting an error in the bid price. The bill establishes that if there is a discrepancy between the total price and the unit price of a bid, the unit price prevails, and if there is a discrepancy between the written price and the numerical price of a bid, the written price prevails. The bill establishes that these provisions do not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid and requires the district to document the basis of its selection, to make its evaluations public not later than the seventh day after the date the contract is awarded, and to state in writing in the contract file the reasons for making an award. The bill establishes that a contract awarded in violation of the bill's provisions is void.

C.S.S.B. 857 authorizes the board of trustees to adopt rules and procedures for the acquisition of goods and services by the district and makes district purchases subject to audit by the state auditor in accordance with state law. The bill sets forth requirements for the publication of notice for the invitation to bid or propose and deadlines for the receipt of bids and proposals following certain publication dates.

C.S.S.B. 857 authorizes the district to discuss acceptable or potentially acceptable proposals with bidders to assess a bidder's ability to meet the solicitation requirements and, after receiving a proposal but before making an award, to permit the three highest-ranking bidders to revise their proposals to obtain the best final offer. The bill prohibits the district, before an award, from disclosing information derived from proposals submitted from competing bidders in conducting discussions. The bill authorizes the district to require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference or site visit, or both, as a condition of a request for bid or proposal; requires notice of this requirement to be included in the published notice; and authorizes the district, after conducting a mandatory pre-bid conference or site visit, to send any additional required notice for the proposed contract only to prospective bidders who attended or were represented at the conference or who are documented as having visited the site.

C.S.S.B. 857 requires the district, if it determines that the district has received identical bids, to cast lots to determine which bidder will be awarded the contract and to invite the bidders to witness the selection process and requires the selection process to be conducted by at least two district employees or members of the district's board of trustees. The bill authorizes the district, as it determines necessary, to require a bid deposit, in the form of a cashier's check, certified check, or bid bond written by a surety authorized to conduct business in Texas, in a district-determined amount and requires the amount of the deposit, if any, to be stated in the required notice of the invitation to bid. The bill requires the district, on the award of a contract or the rejection of all bids, to return the bid deposit of an unsuccessful bidder, authorizes the bid deposit of the successful bidder to be retained until the contract is signed by the district, and prohibits a bid deposit from being held longer than 90 days.

C.S.S.B. 857 authorizes a district to require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase of goods or services with a value of \$100,000 or more and requires the bond to be written by a surety authorized to conduct business in Texas and generally to comply with the performance bond requirements of state law.

C.S.S.B. 857 makes it a Class B misdemeanor for a district officer, employee, or agent to make or authorize separate, sequential, or component purchases, with criminal negligence, for the purpose of avoiding the requirements relating to purchase methods, evaluation and award of a contract, and purchases made without advertising, or to violate those requirements other than by such conduct. The bill specifies that such an offense involves moral turpitude and results in the forfeiture of an officer's public office. The bill makes it a Class C misdemeanor for a district officer or employee to knowingly violate the requirements other than by conduct described above and establishes that the final conviction of a person other than a member of the board of

trustees for a Class B misdemeanor results in the immediate removal from office or employment of that person. The bill establishes that a trustee who is convicted of an offense is subject to removal as provided by state law relating to quo warranto and that for four years after the date of the final conviction the removed person is ineligible to be a candidate for or to be appointed or elected to Texas public office, to be employed by or act as an agent for the state or a Texas political subdivision, or to receive any compensation through a contract with the state or a Texas political subdivision. The bill establishes that removal does not prohibit the payment of retirement benefits or workers' compensation benefits to the removed person, nor does it make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements. The bill authorizes a court to enjoin performance of a contract made in violation of these provisions; authorizes a county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or an interested party to bring an action for an injunction; and entitles a party who prevails in an action so brought to reasonable court-approved attorney's fees.

C.S.S.B. 857 sets forth separate requirements and procedures for the selection and engagement of vendors from which a district may purchase goods or services where the total cost of the goods and services is expected to be \$50,000 or more during a fiscal year but the selling price must be determined at the time the need for the goods and services arises. The bill requires the district, before making a purchase of such goods or services, to obtain written price quotations from at least three bidders from a list created by the district for that category and requires the district, if fewer than three bidders are on the list, to contact each bidder. The bill authorizes the district, if more than three bidders are on the list, to invite all bidders to provide a quotation or to select three bidders on a rotational basis each time a purchase is to be made. The bill requires the bidding records to be retained with the district's competitive bidding records and makes the records subject to audit.

C.S.S.B. 857 requires a purchase of goods or services with a cost of \$10,000 or more but less than \$50,000 to be made by written competitive bids or proposals and requires a minimum of three bids or proposals to be considered before the award of a contract or order for the specified goods or services. The bill establishes that a district is not required to advertise the purchase and requires the district, in determining from whom to purchase the goods or services, to consider the provisions relating to the evaluation and award of a contract. The bill prohibits a person from using this process to knowingly violate the specified purchasing procedures.

C.S.S.B. 857 requires a person or business entity that enters into a contract with a district to give advance notice if the person or an owner or operator of the business entity has been convicted of a felony, including a general description of the conduct resulting in the conviction. The bill authorizes a district to refuse to enter into a contract or other transaction with such a person or entity and to terminate a contract with a person or business entity if the district determines that the person or entity failed to give notice or misrepresented the conduct resulting in the conviction. The bill requires the district to compensate the person or business entity for goods delivered or services performed before the contract's termination and establishes that provisions relating to a contractor's criminal history notification do not apply to a publicly held corporation.

C.S.S.B. 857 requires a district that purchases agricultural products to give preference to those products produced, processed, or grown in Texas if the cost to the district for those products is equal to or less than the cost of other products and the quality of those products is equal to or exceeds the quality of others. The bill requires a district, if it determines that Texas agricultural products are not entitled to a preference, to give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost and quality meet the same criteria. The bill requires a district that purchases vegetation for landscaping purposes to give preference to Texas vegetation if the cost and quality meet the same criteria as well and authorizes a district to receive assistance from and use the resources of the Department of Agriculture in implementing these provisions. The bill prohibits a district from adopting product purchasing specifications that unnecessarily exclude Texas agricultural

products.

C.S.S.B. 857 authorizes a district on an annual basis, in order to increase operational efficiency and to achieve savings through volume purchases, to identify common types of goods and services to be purchased from the district's budget and, to the extent the district determines practicable, consolidate such purchases under contracts. The bill authorizes the board of trustees as appropriate to delegate its authority to a designated person, representative, or committee and requires the district in procuring goods or services other than construction services to provide notice and the delegation and its limits in the request for bids, proposals, or qualifications or in an addendum to the request. The bill specifies that if the district fails to provide such notice, a ranking, selection, or evaluation of bids, proposals, or qualifications other than by the board of trustees in an open public meeting is advisory only. The bill prohibits the board from delegating the authority to act regarding an action specifically authorized or required to be taken by the board of trustees.

C.S.S.B. 857 defines "board of trustees" and "district" and specifies that "purchase of goods" includes contracting for the rights to use rather than own goods and purchase of the materials and labor incidental to the delivery of installation of personal property but not the purchase or lease of real property. The bill specifies that "services" do not include construction services or certain professional services and defines "component purchases" as purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase, "separate purchases" as purchases, made separately, of goods and services that in normal purchasing practices would be purchased in one purchase, and "sequential purchases" as purchases, made over a period, of goods and services that in normal purchasing practices would be purchased in one purchase.

C.S.S.B. 857 establishes that in provisions relating to construction contracts the terms "bidder," "offeror," and "vendor" are used interchangeably to identify an entity that responds to a request for competitive bids or proposals, or for offers or qualifications, and that the term "bid" is used to refer to a competitive bid or proposal or to a statement of qualifications.

C.S.S.B. 857 requires all contracts for construction, rehabilitation, alteration, or repair of facilities valued at \$50,000 or more to be made by the method, of the following methods, that provides the best value for the district: competitive sealed bids; competitive sealed proposals; a design-build contract; a construction manager-at-risk; or a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. The bill specifies that only one of these methods may be used for any individual contract and requires a district to determine which method provides the best value for the district before providing the required notice. The bill requires the district, if using the competitive sealed proposal method, to reveal when the proposals are opened the names of the companies submitting proposals and to keep the contents of the proposals confidential until the district concludes negotiations and awards a contract. The bill authorizes a district to contract for the services of a construction manager-agent in conjunction with the method of contracting selected above and authorizes contracts for the replacement or repair of district property to be made by methods other than those required if the property is destroyed, stolen, severely damaged, unusable, or undergoes major operational or structural failure, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees, or its designee, determines that the delay posed by using the contracting methods would pose a material threat to personal safety or potential damage to other property or would prevent or substantially impair the conduct of classes or other essential district activities.

C.S.S.B. 857 requires a district to award a contract to the lowest responsible bidder offering the best value to the district according to the selection criteria established by the district, requires the district to publish in the request for bids, proposals, or qualifications the criteria the district will use to evaluate the offers and the relative weights given to the criteria that are known at the time of publication, and enumerates certain criteria the district may consider in determining the lowest

responsible bidder.

C.S.S.B. 857 authorizes a district to reject any or all bids, proposals, qualifications, or parts same if the rejection serves the district's interest and requires the district to provide all bidders with the opportunity to submit a bid or proposal to provide the same items or services on equal terms and have bids judged according to the same standards as those set forth in the request for bids. The bill sets forth the procedure by which bids are to be requested and opened and prohibits a bid that has been opened from being changed for the purpose of correcting a bid price error. The bill establishes that these provisions do not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid and requires the district to document the basis of its selection and make its evaluations public not later than the seventh day after the date the contract is awarded. The bill requires the district to state in writing in the contract file the reasons for making an award and establishes that a contract awarded in violation of the bill's provisions is void.

C.S.S.B. 857 authorizes the board of trustees to adopt rules and procedures for the acquisition of construction services by the district and establishes that district construction contracts are subject to audit by the state auditor in accordance with state law. The bill sets forth requirements for the publication of notice for the invitation to bid or propose and deadlines for the receipt of bids and proposals following certain publication dates.

C.S.S.B. 857 authorizes the district to discuss acceptable or potentially acceptable proposals with bidders to assess a bidder's ability to meet the solicitation requirements and, after receiving a proposal but before making an award, to permit the three highest-ranking bidders to revise their proposals, within the scope of the published specifications, to obtain the best final offer. The bill prohibits the district, before an award, from disclosing information derived from proposals submitted from competing bidders in conducting discussions. The bill authorizes the district to require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference or site visit, or both, as a condition of a request for bid or proposal; requires notice of this requirement to be included in the published notice; and authorizes the district, after conducting a conference or site visit, to send any additional required notice for the proposed contract only to prospective bidders who attended or were represented at the conference or who are documented as having visited the site.

C.S.S.B. 857 requires the district, if it determines that the district has received identical bids, to cast lots to determine which bidder will be awarded the contract and to invite the bidders to witness the selection process and requires the selection process to be conducted by at least two district employees or members of the district's board of trustees. The bill authorizes the district, as it determines necessary, to require a bid deposit in an district-determined amount and requires the amount of the deposit, if any, to be stated in the required notice of the invitation to bid. The bill requires the district, within 10 days from the award of a contract or the rejection of all bids, to return the bid deposit of an unsuccessful bidder, prohibits a bid bond from being held for more than 90 days, and authorizes the district, before the award of the contract, to return bid bonds of bidders that are not being considered for award of a contract. The bill authorizes the bid deposit for public work contracts, if any, to be only in the form of a bid bond written by a surety authorized to conduct business in Texas.

C.S.S.B. 857 requires the contractor, for a contract for construction, to execute a good and sufficient payment bond and a performance bond in accordance with state law. The bill authorizes the board of trustees, as appropriate, to delegate its authority to a designated person, representative, or committee and requires the district, in procuring construction services, to provide notice of the delegation and its limits in the request for bids, proposals, or qualifications or in an addendum to the request. The bill specifies that if the district fails to provide such notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only and prohibits the board from delegating the authority to act regarding an action specifically authorized or required

to be taken by the board of trustees.

C.S.S.B. 857 makes it a Class B misdemeanor for a district officer, employee, or agent to make or authorize separate, sequential, or component purchases, with criminal negligence, for the purpose of avoiding the requirements relating to construction contracting methods and evaluation and award of a contract or to violate these requirements other than by such conduct. The bill specifies that such an offense involves moral turpitude and results in the forfeiture of an officer's public office. The bill makes it a Class C misdemeanor for a district officer or employee to knowingly violate the requirements of provisions relating to construction contracting methods, evaluation and award of a contract, or change orders other than by conduct described above. The bill establishes that the final conviction of a person other than a member of the board of trustees for a Class B misdemeanor results in the immediate removal from office or employment of that person. The bill establishes that a member of the board of trustees who is convicted of an offense is subject to removal as provided by state law relating to quo warranto, and that for four years after the date of the final conviction the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in Texas, to be employed by or act as an agent for the state or a Texas political subdivision, or to receive any compensation through a contract with the state or a Texas political subdivision. The bill establishes that removal does not prohibit the payment of retirement benefits or workers' compensation benefits to the removed person, nor does it make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements. The bill authorizes a court to enjoin performance of a contract made in violation of these provisions; authorizes a county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or an interested party to bring an action for an injunction; and entitles a party who prevails in an action so brought to reasonable court-approved attorney's fees.

C.S.S.B. 857 requires a person or business entity that enters into a contract with a district to give advance notice if the person or an owner or operator of the business entity has been convicted of a felony, including a general description of the conduct resulting in the conviction. The bill authorizes a district to refuse to enter into a contract or other transaction with such a person or entity and to terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice or misrepresented the conduct resulting in the conviction. The bill requires the district to compensate the person or business entity for goods delivered or services performed before the contract's termination and establishes that these provisions do not apply to a publicly held corporation.

C.S.S.B. 857 authorizes a district, after performance of a construction contract begins, to approve change orders if necessary to make changes in plans or specifications or to decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished. The bill prohibits a contract's total price from being increased by a change order unless a provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures. The bill prohibits the original contract price from being increased by more than 25 percent unless the board of trustees determines the change is due to causes beyond the reasonable control of the district or contractor and establishes that a person who knowingly authorizes one or more change orders that, in the aggregate, exceed 25 percent of the original contract price is subject to criminal penalty.

C.S.S.B. 857 requires the architect or engineer that prepared the plans and specifications for a contracted public work, in order to protect the interest of the district, to carry at the architect's or engineer's expense an errors and omissions insurance policy in an amount not less than \$1 million or the value of the work if the work has a value of less than \$1 million.

C.S.S.B. 857 authorizes a district to use the design-build method for the construction, rehabilitation, alteration, or repair of a facility and requires a contracting district and the design-build firm to follow certain procedures when doing so. The bill authorizes the district to

designate an engineer or architect to act as its representative and requires any engineer or architect, if the district's engineer or architect is not a full-time district employee, to be selected on the basis of demonstrated competence and qualifications in accordance with the Professional Services Procurement Act. The bill requires the district to prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project and requires the district to prepare a design criteria package that includes more detailed information on the project, with the engineering or architectural services if necessary, and in accordance with applicable law. The bill requires the district to evaluate statements of qualifications and select a design-build firm in two phases outlined in the bill.

C.S.S.B. 857 requires the engineers or architects of the selected design-build firm to complete the design, submitting all design elements for review and determination of scope compliance to the district or to the district's engineer or architect before or concurrently with construction. The bill requires an engineer to have responsibility for compliance with the engineering design requirements and all other applicable requirements of the Texas Engineering Practice Act and requires an architect to have responsibility for compliance with the requirements of provisions relating to the Texas Board of Architectural Examiners. The bill requires the district to provide or contract for, independently of the design-build firm, the inspection services, testing of construction materials engineering, and verification testing services necessary for district acceptance of the facility and requires the district to select those services in accordance with state law. The bill requires the design-build firm to supply a signed and sealed set of project construction documents to the district at the conclusion of construction and establishes that a payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. The bill requires the penal sums of the performance and payment bonds delivered to the district, if a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, to each be in an amount equal to the project budget, as specified in the design criteria package. The bill requires the design-build firm deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

C.S.S.B. 857 authorizes a district to contract with a construction manager-agent in conjunction with a contract for the construction, rehabilitation, alteration, or repair of a facility and requires a district to follow certain prescribed procedures in doing so. The bill establishes that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alteration, or repair of a facility and authorizes a district using a construction manager-agent's services to require the manager-agent to provide certain personnel, equipment, and services specified in the contract. The bill establishes that a construction manager-agent represents the district in a fiduciary capacity and requires the district, before or concurrently with selecting a manager-agent, to select or designate an engineer or architect to prepare the construction documents for the project and to take full responsibility for complying with applicable law. The bill requires the district, if the engineer or architect is not a full-time district employee, to select the engineer or architect on the basis of demonstrated competence and qualifications and prohibits the district's engineer or architect from serving, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as such under a separate or concurrent procurement conducted in accordance with these provisions. The bill establishes that its provisions do not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement with the district and in accordance with applicable licensing laws.

C.S.S.B. 857 requires a district using the services of a construction manager-agent to procure a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for

their specific portion of the work and requires the district or the construction manager-agent to procure in accordance with state law all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the district.

C.S.S.B. 857 authorizes a district to use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility and requires a district to follow certain prescribed procedures in doing so. The bill establishes that a construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of the facility. The bill requires the district, before or concurrently with selecting a construction manager-at-risk, to select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with applicable state law and requires the district, if the engineer or architect is not a full-time district employee, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by law. The bill prohibits the district's engineer, architect, or construction manager-agent for a project from serving, alone or in combination with another, as the construction manager-at-risk and requires the district to provide or contract for, independently of the manager-at-risk, the inspection services, testing of construction materials engineering, and verification testing services necessary for acceptance of the facility by the district, selected in accordance with state law.

C.S.S.B. 857 requires the district to select the construction manager-at-risk in either a one-step or two-step process, as outlined in the bill. The bill requires the district, at each step, to receive, publicly open, and read aloud the names of the offerors and, within 45 days after the opening date, to evaluate and rank each submitted proposal in relation to the criteria set forth in the request for proposals. The bill requires the district, within seven days from the date of the award of the contract, to make public all proposals, including the stated fees and prices. The bill requires the district to select the offeror that submits the proposal offering the best value for the district based on the published selection criteria and on its ranking evaluation and to attempt first to negotiate a contract with the selected offeror. The bill requires the district, if it is unable to negotiate a satisfactory contract, to end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. The bill requires a construction manager-at-risk to publicize notice and receive bids or proposals from trade contractors or subcontractors for the performance of all major work elements other than the minor work that may be included in the general conditions and authorizes a construction manager-at-risk to seek to perform portions of the work itself if the manager-at-risk submits a bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the district determines that the manager-at-risk's bid or proposal provides the best value.

C.S.S.B. 857 requires the construction manager-at-risk and the district or its representative to review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the manager-at-risk, engineer, architect, or district and requires all bids or proposals to be made public after the award of the contract or within seven days after the final selection of bids or proposals, whichever is later. The bill requires the district, if the manager-at-risk reviews, evaluates, and recommends a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, to compensate the manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the manager-at-risk may incur because of the district's requirement. The bill authorizes the manager-at-risk, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract, to fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements without advertising. The bill requires the penal sums of the performance and payment bonds delivered to the district, if a fixed

contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, to each be in an amount equal to the project budget, as specified in the request for qualifications and requires the manager-at-risk to deliver the bonds not later than the 10th day after the date the manager-at-risk executes the contract unless the manager-at-risk furnishes a bid bond acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

C.S.S.B. 857 requires a district, in selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, to follow certain procedures outlined in the bill. The bill requires the district to select or designate an engineer or architect to prepare construction documents for the project and establishes that the selected or designated engineer or architect has full responsibility for complying with applicable state law. The bill requires the district, if the engineer or architect is not a full-time district employee, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by state law. The bill requires the district to provide or contract for, independently of the contractor, the inspection services, testing of construction materials engineering, and verification testing services necessary for district acceptance of the facility; to select those services for which it contracts in accordance with state law; and to identify them in the request for proposals. The bill requires the district to prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request and to receive, publicly open, and read aloud the names of the offerors. The bill requires the district, within 45 days after opening the proposals, to evaluate and rank each proposal in relation to the published selection criteria and to attempt first to negotiate a contract with the highest-ranked offeror. The bill authorizes the district and its engineer or architect to discuss with the selected offeror options for a scope or time modification and any price change associated with same and requires the district, if it is unable to negotiate a contract, to end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

C.S.S.B. 857 authorizes a district to use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

C.S.S.B. 857 authorizes a district to award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks. The bill authorizes the district to establish contractual unit prices for a job order contract by specifying one or more published construction unit price books and the applicable divisions or line items or by providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal. The bill requires the district to advertise for, receive, and publicly open sealed proposals for job order contracts, as required in provisions relating to construction services contracts, and authorizes the district to require offerors to submit certain additional information besides rates and to award job order contracts to one or more contractors in connection with each solicitation of bids or proposals. The bill requires an order for a job or project under the contract to be signed by the district's representative and the contractor and authorizes the order to be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or to be a unit price order based on the quantities and line items delivered. The bill requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order and establishes that the base term of a job order contract is for the period and with any renewal option that the district sets forth in the proposals request. The bill prohibits the base term, if the district fails to advertise it, from exceeding two years and establishes that it is not renewable without further advertisement and solicitation of proposals.

C.S.S.B. 857 requires a contract for construction with a cost of \$10,000 or more but less than

\$50,000, including contingency or reserve amounts, to be made through written competitive bids or proposals. The bill requires a minimum of three bids or proposals to be considered before awarding a contract and establishes that a district is not required to advertise the contract. The bill requires the district, in determining to whom to award a contract made without advertising, to consider the criteria used for construction services contracts and establishes that such a contract is not required to be made through competitive bids or proposals if it is for the repair or replacement of a captive replacement part or component for equipment or a specialized service that is available from only one source.

C.S.S.B. 857 defines "architect," "construction," "contractor," "engineer," "facility," "fee," "general conditions," "component procurements," "separate procurements," "sequential procurements," "design-build contract," "design-build firm," and "design criteria package" as the terms relate to construction contracts for junior college districts.

C.S.S.B. 857 requires a junior college district to dispose of surplus personal property in an accountable manner that best serves the district's interest and requires a sale of personal property that is not covered the Interlocal Cooperation Act to be solicited and awarded in the same manner as a contract for the purchase of goods or services. The bill authorizes a district to use certain specified methods to dispose of surplus personal property and authorizes the surplus property, if the district is unable to find a buyer, to be discarded in accordance with applicable federal, state, and local laws, ordinances, and rules or to be removed by an interested party at no charge or for a nominal charge. The bill prohibits a district from giving, donating, loaning, or transferring surplus property to any person or entity.

C.S.S.B. 857 requires a junior college district to select and enter into contracts for professional services in accordance with state law and requires the district, if the estimated value of a professional services contract is \$50,000 or more during a fiscal year, or during the contract's term if the contract is a multiple year contract, to publish notice of the request for qualifications. The bill requires such requests, if the estimated value of a contract is \$10,000 or more but less than \$50,000 during a fiscal year or during the contract's term, to be solicited from at least three professional service providers and establishes that, in such case, the publication of notice is not required. The bill authorizes a professional service provider to be selected for a specific project or for various projects that arise during the term of the provider's contract and prohibits the term of a contract with a professional service provider from exceeding five years, except to complete services for projects started before the end of the contract term. The bill defines "professional service provider."

C.S.S.B. 857 requires a junior college district to select and enter into contracts with consultants in accordance with state law and requires the district, if the estimated value of a consulting services contract is \$50,000 or more during a fiscal year, or during the contract's term if the contract is a multiple year contract, to advertise the request for qualifications, bids, or proposals as provided by provisions relating to the purchase of contracts for goods and services. The bill requires such requests, if the estimated value of a consulting services contract is \$10,000 or more but less than \$50,000 during a fiscal year, or during the contract's term, to be solicited from at least three consultants and establishes that, in such case, notice is not required. The bill authorizes a consultant to be selected for a specific project or for various projects that arise during the term of the consultant's contract and prohibits the term of a contract with a consultant from exceeding five years, except to complete services for projects started before the end of the contract term. The bill defines "consultant."

C.S.S.B. 857 authorizes a junior college district board of trustees to adopt rules and procedures for the acquisition of professional services and consultants by the district and establishes that junior college district contracts for professional services or consultants are subject to audit by the state auditor in accordance with state law.

C.S.S.B. 857 amends the Local Government Code to make a conforming change, establishing that the Education Code provisions relating to junior college district purchasing and contracting prevail to the extent of any conflict with other law.

C.S.S.B. 857 repeals provisions in the Education Code relating to the applicability of existing public school district purchasing and contract procedures to junior college districts and the acquisition of library materials by a junior college district. The bill establishes that its provisions do not make an appropriation and that any provision that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific implementing appropriation.

C.S.S.B. 857 repeals the following provisions in the Education Code:

- Section 44.0311(b)
- Section 130.010
- Section 130.0101

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 857 adds provisions not in the original authorizing a junior college district to purchase, license, or otherwise acquire library goods and services without complying with the purchase methods requirements set forth in the bill and defines "library goods and services."